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09/834,478	04/13/2001	Emily Chien	40655.1300	2560
66170 7590 11/24/2009 Snell & Wilmer L.L.P. (AMEX) ONE ARIZONA CENTER 400 E. VAN BUREN STREET PHOENIX, AZ 85004-2202				
EXAMINER RUHL, DENNIS WILLIAM				
ART UNIT 3689		PAPER NUMBER		
NOTIFICATION DATE 11/24/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/834,478

Applicant(s)

CHIEN ET AL.

Examiner

Dennis Ruhl

Art Unit

3689

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-23 and 33-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-23, 33-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/02)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Applicant's response of 7/31/09 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. The amendment filed 2/27/09 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: All of the newly added subject matter that was added to the specification at page 25 is not supported by the originally filed specification. Applicant is referred to the 112,1st rejection where this is addressed in more detail as far as why the amendment to both the specification and the claims is considered to be new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

2. The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

3. The specification is objected to under 37 CFR 1.71 because it fails to provide support as originally filed for the subject matter that has been added in the amendment

of 2/27/09. The specification as originally filed never disclosed what is not added to the specification (as well as for what is newly claimed as is addressed under 112,1st).

Applicant is referred to the 112,1st rejection where this is addressed in more detail as far as why the amendment to both the specification and the claims is considered to be new matter.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1,3-23,33-42, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment of 2/27/09 applicant amended the independent claims 1,5,19,23,33,37,38 by adding new subject matter that is not supported in the specification as originally filed. While not a 112,1st issue regarding the claims, the specification has been amended to disclose subject matter commensurate with the claim amendments that is also new matter. Applicant also added new claim 42 that recites subject matter that is not supported in the specification as originally filed. It was not reasonably clear upon a reading of the specification as originally filed that the inventors contemplated the invention as it is currently is claimed in claims

1,5,19,23,33,37,38, and 42, or that disclosed in the amended specification (not 112,1st issue but discussed here for purposes of brevity). Applicant has taken the position that the specification "incorporated by reference" application number 09/652,899 and 09/241,188, and that because of this incorporation, the newly added subject matter is not new matter. In the specification on page 15 it was stated:

"This system may be integrated with other systems to better facilitate the spending of loyalty points and the conversion of loyalty points to a currency credit. For more information on loyalty systems, smart card systems, transaction systems, electronic commerce systems and digital wallet systems, see, for example, the Shop AMEXTM system as disclosed in Serial No. 60/230,190 filed September 5, 2000; a digital wallet system disclosed in U.S. Serial No. 09/652,899 filed August 31, 2000; a stored value card as disclosed in serial number 09/241,188 filed on February 1, 1999; a system for facilitating transactions using secondary transaction numbers disclosed in Serial No. 09/800,461 filed on March 7, 2001, and smart card systems disclosed in Serial No. 60/232,040, filed on September 12, 2000, and U.S. Patent Nos. 5,742,845; 5,898,838 and 5,905,908, owned by Datascape, all of which are herein incorporated by reference."

With respect to the use of incorporation by particular attention is to be paid to the specific portions of the incorporated document(s) where the incorporated subject matter can be found. In this case, when determining from the specification as originally filed what the inventors contemplated as their invention, it is noted that there is no actual discussion regarding any of the incorporated references as to what is actually being incorporated as far as subject matter goes from each reference. There is no identification of where in the documents any incorporated subject matter can be found. In this case, applicant simply made a generic statement that "This system" may be integrated with other systems to better facilitate the spending of loyalty points and the

conversion of loyalty points to a currency credit. Then it was stated that "For more information on loyalty systems, smart cards, transaction systems, electronic commerce systems and digital wallet systems, see..." and then a number of references are incorporated by reference. Applicant did not state what the subject matter actually was that was being incorporated from any of the references. The language of "*This system may be integrated with other systems to better facilitate the spending of loyalty points and the conversion of loyalty points to a currency credit*" is extremely vague and non-specific as far as what the subject matter was or what the integration was the inventors actually contemplated as their invention. In this case, how would one reading the specification reasonably know that the invention actually was a combination of only a portion of 09/652,899 and a portion of 09/241,188 along with the originally filed instant specification, and not portions of the other references as well. No guidance is given at all as to where in the references the incorporated subject matter can be found.

Applicant's incorporation by reference is seen as nothing more than a vague and general reference to other references, with no particular attention paid to actually what it was that the inventors contemplated as their invention. Also, this disclosure does not seem to even reasonably provide support for taking one feature from one reference, taking another feature from another reference, and combining them with the originally filed disclosure for this application to arrive at the current claims. The instant examiner had no idea that the applicant felt that this was their invention, especially at such a late stage in the prosecution history. In the manner that applicant has attempted to incorporate by reference the various references on page 15, there could be an almost

infinite number of possible combinations that applicant could potentially claim was their invention by simply picking and choosing various combinations from any of the references. This does not seem to be commensurate with the idea that an incorporation by reference has to actually identify the subject matter being incorporated and is to pay particular attention explaining where in the incorporated documents the incorporated subject matter may be found. The newly added subject matter added to claims 1,5,19,23,33,37,38, and 42 was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1,3-23,33-42 contain new matter and are not supported by the specification as originally filed.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burton et al. (5025372) in view of Tedesco et al. (6898570) in view of McMullin (6222914) in view of Adams et al. (7025674).

For claim 43, Burton discloses a method and system for an incentive award program that awards point to participants, where the points can be converted to a monetary value that is then credited to a financial account of the participant. The participant is issued a credit card (the financial account), is authenticated and entered into a loyalty program where any earned loyalty points can be converted to a currency value and that value is then credited to the credit card account. See the Abstract. The claimed steps of "receiving...an account code, merchant identifier, and a payment authorization request" and "approving said payment authorization.." are satisfied by a regular use of the credit card of Burton. This occurs when a loyalty program member uses the credit card (a line of credit) to make a purchase and the credit card system processes the transaction. When the card of Burton is used to execute a transaction, an account number (code) is going to be used so that the ID of the account can be ascertained and verified, along with the merchant ID. The processing of the transaction itself is an authorization request as claimed. This is what happens when a credit card transaction is processed. When a transaction is approved or executed, loyalty points are then earned, which satisfies the claimed "increasing a balance of loyalty points...".

Applicant is simply claiming the earning of points after a purchase has been authorized, which is found in Burton. The loyalty account that is stored on a database is the "Participant" account (see column 10 and column 14, lines 60-68) that is stored on the computer system. The loyalty account for each participant includes information about how many award points have been earned (which is a loyalty point balance). The amount/balance of loyalty points are retrieved from the database and are converted to a currency value by using a computer, see column 13, lines 16-30. The resulting currency value is then credited to a financial account of the participant, which is the disclosed credit card account of the participant. The examiner notes that in columns 29-30, it is disclosed that the participant can request the withholding of earned points, so that the points are not converted to a currency value and credited to the credit card account until a point in time in which the participant requests such an action. The participant can elect to transfer the withheld loyalty points, converted to a currency value, to the credit card account by submitting a request at a later time (done by a user interface that has a device that allows the request to be submitted). This is done to allow the participant to save points towards a future purchase and then when they want to make the purchase they can have the withheld points converted to a currency value and credited to their credit card account (increasing a line of credit due). Column 29 discloses that "When a transfer request is received...the amount of the transfer and type of transfer is *entered into the CPU* in block 753".

Burton does not disclose that a webpage is provided that discloses the transaction and the full purchase amount (online billing statement), as well as the

balance of loyalty points that the participant has earned. Burton does not disclose that the webpage has a device that allows the participant to apply a currency value (from converted points) to a *particular transaction* in the billing statement. Burton does not disclose that the charge for the transaction is actually being offset by the conversion of the points to currency. Burton also does not disclose that the conversion ratio depends on the merchant and one of the date, inventory data, participant status, or method of facilitating the transaction.

With respect to having a webpage that provides an online billing statement for the participant, Tedesco discloses in column 6, lines 28-42 that billing statements are sent to customers online and via a webpage. This is representative of the old and well known idea of having a billing statement online that sets forth what transactions have been processed, etc.. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Burton with the ability to provide an online webpage based billing statement that set forth a listing of transactions that occurred and that are covered in the billing period for the billing statement. This is just updating Burton with modern technology and using the Internet to convey a billing statement to the customer instead of a paper copy in the mail. This is considered to be obvious. This satisfies the portion of the claim that recites the webpage that discloses the transaction and purchase amount, which is what you find in a billing statement for a credit card like in Burton. This does not however, fully address the portion of the claim that recites that the balance of loyalty points is displayed in a section of the webpage. The examiner feels that this is obvious also. In Burton, requests to have points withheld

or applied are made through a computer, it is just not disclosed that it is done via a webpage on the Internet. In Burton the database stores a balance of loyalty points so Burton already uses and discloses having a loyalty points balance. One of ordinary skill in the art that is providing online billing statements for their customers would naturally consider having the participant's point balance also be reflected in their billing statement so the customer/user knows what their balance currently is. The billing statement is a tool that gives information to the participant about their account as far as balances go and any transactions that have occurred. The loyalty points balance is information relating to the account(s) of the participant and this is information that the participant would likely want to know. Using the billing statement to convey the loyalty point balance would have been an obvious choice to one of ordinary skill in the art. In Burton, as stated previously, the acts of requesting withholdings and conversion of points is done by computer. One of ordinary skill in the art would find it obvious to use an online billing statement to show the points balance as well as allowing the participant to request withholdings and conversions via the webpage. After all, the management of points is disclosed as being done by computer in Burton anyway so this is really just using the online billing statement as the tool that allows the participant to know what their balance is (as is disclosed in Burton and done by computer in Burton). Allowing one to use the webpage to submit the request for points conversion (which is done by computer in Burton, is considered to be obvious.

Concerning the offsetting of a previously executed transaction, the examiner notes that the awards points in Burton are converted to a monetary amount that is given

to the customer to spend on an expected future purchase. They are awarding the customer with money. The background of the invention section in Burton also discloses that *"In some cases the points are converted to a direct cash payment to the participant at either the culmination of the period or the program."* This teaches that it is known in the art to provide a cash payment to the participant. In both Burton and this other prior art technique, the purpose is the same, namely, to provide an incentive for the participant and to provide them with a monetary award. In Burton, as has been argued by applicant, the points are apparently credited to the financial account prior to the intended charge actually occurring. Applicant is claiming that instead of crediting the account prior to the purchase of the expected item, the credit is happening after the purchase of the expected item. This all comes down to the timing of when the crediting of the account step occurs and results in one thing, namely the crediting of the account. Applicant is claiming that it is novel to credit the account after the purchase is made instead of doing what Burton does, which is credit the account prior to the expected purchase. Both methods result in the same thing, which is the crediting of a financial account with the currency value, and both ways allow a participant to make a desired purchase. In view of the fact that Burton is providing the participant with a monetary award in the form of a currency value that is deposited to an account, in view of the fact that Burton discloses that points can be stored up and used to pay for a specific item or purchase, and in view of the fact that it is known in the art to provide a monetary award in the form of a cash payment to the participant (that they can do whatever they want with, including paying a credit card bill), one of ordinary skill in the art at the time the

invention was made would have found it obvious to apply the currency value credit to the financial account of the participant for the purpose of allowing them to offset a previously executed charge. This is simply allowing the participant to credit the currency value to any outstanding balance on their account (i.e. a previously executed charge) which results in the available amount of credit going up. In the prior art you are giving a monetary award to the participant, this can be done by the method of Burton (credit before the actual purchase) or can be done by cash payment directly to the participant (cash can be used for anything, including paying a credit card bill). Both have the intent of giving the money to the participant so they can spend it. It would have been obvious to one of ordinary skill in the art at the time the invention was made to allow the currency value of Burton to be credited to the financial account to offset a previous charge, so that the participant can purchase the item they desire before using their points instead of having to wait to have the currency value credited first. One of ordinary skill in the art would have recognized or contemplated the fact that the currency value credit could also be made to the account of the participant, i.e. applying the credit to any outstanding balances. The small difference of applying the credit for an expected future charge versus applying the credit to offset a just executed charge is seen as obvious. The credit must go somewhere. One of ordinary skill in the art would have found it obvious to apply the credit to the account of the participant as applicant has claimed. Additionally, McMullin discloses a customer reward system that allows customers to take their earned award and have it applied to a transaction on a billing statement (a phone bill). Column 4, line 64 to column 5, line 22 discusses that the

earned award can be used to reduce the total balance of the credit card (occurs after charges have been accrued) and discloses that the award may be used to pay off a portion of the balance, such as a phone bill. McMullin states "In other words, the award may be applied to the card in any manner". It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Burton with the ability to allow the participant to have their earned points that were converted to a currency value credited to their balance to offset a previously executed charge as claimed. The idea of crediting the points to the account to offset a previous charge is already known in the art.

With respect to the conversion ratio being dependent on the merchant and the other recited data, this is not taught. Adams discloses a customer rewards system that awards points to a customer. A conversion ratio is used. In column 2, lines 11-28 it is disclosed that it is known to alter conversion ratios to encourage purchases at various shops or during various seasons (dates). It is known in the art to provide different conversion ratios, where the conversion ratio depends on the merchant (to encourage purchases at various shops), and a date (seasonal encouragement). While this is a disclosure to the conversion of a purchase in dollars to points, it is a teaching to one of ordinary skill in the art that the conversion ratio can vary as desired based on merchant and a date (seasonal). The applicant is just claiming the varying of the conversion ratio going the other way, when converting points to currency as opposed to a dollar purchase to points. Simply varying the conversion ratio of points to currency for particular merchants and a particular time is something that involves no more than

ordinary skill in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to allow for varying conversion ratios (points to currency) depending on what merchant the saved up points are going to be used with for the expected purchase and dependent on the date of the transaction (seasonal time) to encourage loyalty program members to shop with their earned points at particular merchants and to convert their points at a particular time of year (possibly during the slow time of the year for seasonal sales). When one decides to save their points up for a purchase at a particular store, it would have been obvious to make the points be worth more in currency for that purchase at the particular store (the points are worth more at that store, such as earning double points) as well as more points for the time of the purchase (seasonal encouragement). The conversion of the points to currency does not occur without the confirmation from the customer themselves.

9. Applicant's arguments filed 7/31/09 have been fully considered but they are not persuasive.

Regarding the 112,1st new matter rejection, the arguments are not persuasive and the previous amendment of 2/27/09 is still considered to be introducing new matter into the claims that is not supported by the originally filed specification. Applicant has argued that having to point out where in the incorporated document the incorporated subject matter would be found defeats the purpose of having official notice because then the information in the incorporated document has to be repeated. This is not true. There is a difference between explaining where in the incorporated document the

incorporated subject matter can be found and having some sort of explanation of what is being incorporated as far as specific subject matter goes as opposed to having to repeat the totality of the incorporated disclosure. The examiner is not asking for or requiring that applicant repeat anything, the examiner is taking the position that in this case with the specific language used in the incorporation by reference by applicant, it is not clear what was being incorporated and how. In this case, when determining from the specification as originally filed what the inventors contemplated as their invention, it is noted that there is no actual discussion regarding any of the incorporated references as to what is actually being incorporated as far as subject matter goes from each reference. There is no identification of where in the documents any incorporated subject matter can be found. In this case, applicant simply made a generic statement that "This system" may be integrated with other systems to better facilitate the spending of loyalty points and the conversion of loyalty points to a currency credit. Then it was stated that "For more information on loyalty systems, smart cards, transaction systems, electronic commerce systems and digital wallet systems, see..." and then a number of references are incorporated by reference. Applicant did not state what the subject matter actually was that was being incorporated from any of the references. The language of "*This system may be integrated with other systems to better facilitate the spending of loyalty points and the conversion of loyalty points to a currency credit*" is extremely vague and non-specific as far as what the subject matter was or what the integration was the inventors actually contemplated as their invention. In this case, how would one reading the specification reasonably know that the invention actually was a

combination of only a portion of 09/652,899 and a portion of 09/241,188 along with the originally filed instant specification, and not portions of the other references as well. No guidance is given at all as to where in the references the incorporated subject matter can be found. If applicant's position is correct, then it means that any patent applicant can incorporate by reference an unlimited number of references in a very generic sense, and then at a later time can pick and choose from an unlimited combination of features from those references to claim something that the original disclosure never even disclosed. That is not what the taking of official notice was created for and results in problems under 112,1st as far as support for what is claimed as far as new matter goes. The examiner agrees that there is no statutory requirement to identify the portions of incorporated documents, but if applicant does not fully and sufficiently explain what is being incorporated and how, then the statute that controls is 35 USC 112,1st. That is the authority under which the current claims are rejected. The argument is not persuasive and the rejections regarding new matter will be maintained.

With respect to the prior art traversals, they are not persuasive.

Applicant has argued the taking of official notice by the examiner is not proper and has requested evidence. No official notice has been taken. The issue of the loyalty points balance being presented to the user in a billing statement was not addressed by the taking of official notice. It was addressed by addressing what is disclosed in Burton in view of Tedesco and why one of ordinary skill in the art would do what is claimed. Motivation under 35 USC 103 does not have to always come from printed references, it can come from that which one of ordinary skill in the art would understand and

appreciate. Applicant is arguing that the claims are allowable because the points balance is displayed or presented in a billing statement. The applicant fails to address the use of Tedesco on the merits and is not addressing the rejection of record from the examiner. Applicant has to respond to the rejection of record and not just taking a very narrow view and only attack comments from the examiner while ignoring the rest of the rationale and explanation that was made in support of the obviousness. What about the fact that Burton keeps track of a loyalty points balance and what about the fact that the customer can request their points conversion? How could they do that if they were never made aware of the balance? It seems obvious logical that one of ordinary skill in the art would consider using the billing statement that is sent to the user to list the current points balance for the reasons set forth by the examiner, the reasons and explanation that applicant has not really addressed on the merits. Part of the rejection and obviousness finding is based on logic and common sense in view of what the prior art already discloses. A lot of the arguments are made by attacking the references individually and this is not addressing the rejection of record, which is made from a combination of references. Applicant argues Burton does not disclose a conversion ratio. Adams was used to show that feature. Applicant never addressed the rejection as far as how and why the examiner relied upon Adams. The same is found to be true for all of the secondary references used in the rejection. The newly added claim 43 is rejected for the reasons set forth in the rejection of record.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis Ruhl/
Primary Examiner, Art Unit 3689